

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

CARLOSE D. ROBINSON,

Petitioner,

v.

**Civil Action No. 2:08cv116
(Judge Maxwell)**

BUREAU OF PRISONS,

Respondent.

ORDER

It will be recalled that on January 5, 2009, Magistrate Judge Seibert filed his Report and Recommendation, wherein the Petitioner was directed to file with the Clerk of Court any written objections within ten (10) days after being served with a copy of the Report and Recommendation. Petitioner filed his objections on February 18, 2009.

Upon examination of the report from the Magistrate Judge, which recommends that Petitioner's writ of mandamus, which requests that the authorities at USP Hazelton be compelled to turn over all physical evidence involving an alleged assault, be dismissed without prejudice. On December 19, 2008, Petitioner filed a Motion to Appoint Counsel, which Motion had a letter attached stating, "so unless the Court grants me counsel I ask humbly that this action before the Court is dismissed without prejudice." Accordingly, Magistrate Judge Seibert recommends in the Report and Recommendation that Petitioner's attached letter be construed as a stipulation of dismissal. Magistrate Judge Seibert, finding no particular need or exceptional circumstances, also Ordered that the Petitioner's Motion to Appoint Counsel be denied.

In his objections, Petitioner asks the Court to reconsider this action and to appoint him counsel. The Court agrees with Magistrate Judge Seibert's finding that Petitioner has not shown a particular need or exceptional circumstances sufficient to require the appointment of counsel. Upon a de novo review of the entire record before the Court, the Court finds that the Report and Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in this action.

Petitioner's letter, attached to his Motion to Appoint Counsel, clearly requests that his action be dismissed without prejudice if his Motion to Appoint Counsel is denied and Magistrate Judge Seibert's recommendation that said letter be construed as a stipulation of dismissal is appropriate. The Court does not find that Petitioner's objections have withdrawn this stipulation in any way. However, the Court also notes that on November 24, 2008, Petitioner was issued a Notice of Deficient pleading advising him that he had twenty days to either pay the \$350 filing fee or submit an application to proceed in forma pauperis. Petitioner was advised in said Notice that a failure to do so would result in a dismissal of his case for failure to prosecute. A review of the docket shows that, at this date, Petitioner has yet to pay the filing fee or file the required forms to proceed without prepayment of fee. Therefore, it is

ORDERED that Magistrate Judge Seibert's Report and Recommendation be, and the same hereby is, accepted in whole and that this action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

ORDERED that the Petitioner's letter, attached to his Motion to Appoint Counsel, be construed as a stipulation of dismissal. It is further

ORDERED that the above-styled civil action be, and the same hereby is, **DISMISSED without prejudice** pursuant to the stipulation of dismissal and for failure to prosecute, and **STRICKEN** from the docket of this Court. It is further

ORDERED that, if Petitioner should desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of this Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, Petitioner may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed in forma pauperis from the United States Court of Appeals for the Fourth Circuit.

ENTER: November 4, 2009

/s/ Robert E. Maxwell
United States District Judge